

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION**

MICHAEL DEWAYNE MILLER,

Plaintiff,

vs.

**GERBER COLLISION (NORTHEAST),
INC., BOYD GROUP (U.S.), INC., AND
CHRISTOPHER HARDIN,**

Defendants.

Civil Action No. 4:19-cv-00018

NOTICE OF REMOVAL

Defendants Gerber Collision (Northeast), Inc. (Gerber Collision) and Boyd Group (U.S.), Inc. (Boyd Group) (together, Defendants) file this Notice of Removal in accordance with 28 U.S.C. §§ 1331, 1441, and 1446 and hereby remove this action from the General Court of Justice of Craven County, Superior Court Division, North Carolina to the United States District Court for the Eastern District of North Carolina. In support of Defendants' Notice of Removal, Defendants state as follows:

1. On December 31, 2018, Plaintiff Michael Dewayne Miller (Plaintiff), a former employee of Gerber Collision, filed a lawsuit in the General Court of Justice of Craven County, Superior Court Division, titled *Michael Dewayne Miller v. Gerber Collision (Northeast), Inc., Boyd Group (U.S.), Inc., and Christopher Hardin*, 18-CVS-01673 (the State Court Civil Action).

2. Plaintiff's counsel caused Gerber Collision to be served with a copy of the Summons (**Exhibit A**) and Complaint (**Exhibit B**) by service on its registered agent on January 2, 2019. Plaintiff's counsel also caused Boyd Group to be served with a copy of the Summons

(**Exhibit C**) and Complaint (**Exhibit D**) on January 8, 2019. Therefore, this Notice of Removal is timely. *See* 28 U.S.C. § 1446(b).

3. This Court has federal question jurisdiction over the State Court Civil Action pursuant to 28 U.S.C. § 1331 because Plaintiff asserts a claim for relief under the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, 42 U.S.C. §§ 12101-11113. (*See* Exhibit B, ¶ 36.) Plaintiff's state law claims in Counts II, III, and IV are so related to his federal claim that they form part of the same case or controversy. 28 U.S.C. § 1367(a). To wit, the same allegations of unfair treatment and constructive discharge due to Plaintiff's disability underlie all of Plaintiff's claims. (*See* Exhibit B, ¶¶ 50 (alleging, under the ADAAA, that Plaintiff was discriminated against in his terms and conditions of employment, and "forced out" of the workplace, because of his disability), 61 (nearly identical allegations against individual Defendant Christopher Hardin in Plaintiff's tortious interference with contractual relations claim), 69 (stating that alleged "discriminatory and retaliatory conduct" forms the basis of Plaintiff's intentional infliction of emotional distress claim), and 78-79 (stating that Plaintiff's public policy/wrongful discharge claim under North Carolina law is also based on alleged disability discrimination).) Therefore, this case is removable in its entirety without the need to sever Plaintiff's state law claims. 28 U.S.C. § 1441(c).

4. The individual Defendant, Christopher Hardin, has not been properly joined and served. Accordingly, the only Defendants that have been properly joined and served are Gerber Collision and Boyd Group, and both of them consent to removal of this action. *See* 28 U.S.C. § 1446(b)(2)(A).

5. Defendants have attached to this filing true and correct copies of all process, pleadings, and orders served on them in the State Court Civil Action. *See* Exhibits A-D; 28 U.S.C. § 1446(a).

6. Venue is proper in the United States District Court for the Eastern District of North Carolina as this case was originally filed in the General Court of Justice of Craven County, North Carolina, Superior Court Division, which lies within this District. *See* 28 U.S.C. § 1446(a); 28 U.S.C. § 113(a).

7. A true and complete copy of this Notice of Removal has been served by U.S. Mail delivery upon the Clerk of the General Court of Justice of Craven County, North Carolina, Superior Court Division for filing in accordance with 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Notice of Removal is attached hereto as Exhibit E, the original of which is being filed with the General Court of Justice of Craven County, North Carolina, Superior Court Division Civil Clerk. This Notice of Removal and a Notice of Filing of Notice of Removal have also been served via overnight courier upon Plaintiff's counsel.

Dated: January 30, 2019

/s/ Steven A. Nigh

Steven A. Nigh, Bar No. 51837

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Attorneys for Defendants

*Gerber Collision (Northeast), Inc. and Boyd
Group (U.S.), Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2019, I electronically filed the foregoing **DEFENDANTS' NOTICE OF REMOVAL** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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